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BY ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Written Ex Parte*  
UNE Triennial Review – CC Docket No. 01-338  
Local Competition – CC Docket No. 96-98  
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Attached for inclusion in the record of the three above-referenced proceedings is a memorandum, entitled “Building Access Issues Presented in the UNE Triennial Review,” filed on behalf of WorldCom, Inc.

Sincerely,

/s/Ruth Milkman  
Ruth Milkman

Attachment

cc: Michelle Carey  
Jeremy Miller  
Claudia Pabo

Thomas Navin  
Robert Tanner



## **Building Access Issues Presented in the UNE Triennial Review**

As WorldCom has demonstrated, incumbent local exchange carriers (“LECs”) enjoy important advantages over new entrants that are not common to other industries. Among other advantages, the incumbents have obtained key building access rights that are costly for competitors to duplicate. New entrants, however, often must contend with recalcitrant landlords to gain building access rights.<sup>1</sup> Even when competitors can obtain the access they need, they often incur significant costs and experience extensive delays in negotiating the necessary agreements.<sup>2</sup> In determining whether competitive carriers are impaired in their ability to offer services under section 251 of the Act,<sup>3</sup> it is important that the Commission take into consideration these barriers to entry that are specific to the telecommunications industry.

### **I. Competitive LECs Continue to Suffer from Discriminatory Access to Commercial and Multi-Tenant Buildings**

Two years ago, the Commission established certain requirements in its *Competitive Networks Order* to increase competitive telecommunications options for tenants in multi-tenant environments (“MTEs”).<sup>4</sup> Although these rules were intended to reduce barriers to competitive network deployment, the order fell short of mandating a complete non-discrimination scheme under which all carriers would be guaranteed access

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<sup>1</sup> See WorldCom Comments, CC Dkt. No. 01-338, at 33-34 (“WorldCom UNE Comments”).

<sup>2</sup> See *id.* at 20-21, 33-34.

<sup>3</sup> 47 U.S.C. § 251(d)(2)(B).

<sup>4</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd 22983 (2000) (“*Competitive Networks Order*”).

to all buildings on equal terms and conditions.<sup>5</sup> As described in more detail below, since the release of the *Competitive Networks Order*, competitive LECs have continued to experience difficulties in obtaining access to MTEs and access to buildings on the same terms and at the same rates as incumbent LECs.<sup>6</sup> Unlike incumbent LECs, which do not pay for access to the MTE, competitive LECs are usually asked to pay unreasonable fees or high rents for access. Additionally, many building owners impose unreasonable and discriminatory terms and conditions on competitive LECs, delay negotiations, and even deny building access altogether. The denial of access to buildings on non-discriminatory terms and at reasonable rates severely restricts the ability of competitive LECs to expand their networks and effectively compete against the incumbent LECs.

#### **A. Incumbent LECs' Networks Dwarf Those of Competitive Carriers**

Nationwide, there are almost a million commercial office buildings and millions of other business customer locations.<sup>7</sup> Yet, only five percent of commercial tenants nationwide – and a fraction of residential tenants – have access to competitive telecommunications services.<sup>8</sup> Even in the most competitive serving areas in major cities, most of the buildings where competitive LECs have customers are served only by incumbent LEC facilities.<sup>9</sup> The scope of competitive LEC networks has not expanded to

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<sup>5</sup> The *Competitive Networks Order* prohibited new exclusive contracts between building owners and LECs and clarified that competitive LECs have the right to use conduit still owned by the incumbent LECs, and, in certain circumstances (*e.g.*, when a building owner has not established a single point of entry), the right to lease incumbent LEC intrabuilding wire as an unbundled network element. *Id.* ¶¶ 6, 48.

<sup>6</sup> See generally Cole, Raywid & Braverman, Building Access Primer (July 30, 2002), available at: <<http://www.alts.org/Filings/SBPP/ALTS-CRBBuildingAccessPrimerJuly2002.pdf>> (“*Building Access Primer*”); Comments of the Smart Buildings Policy Project, WT Docket No. 99-217 (filed March 8, 2002) (“*Smart Buildings Comments*”); see also Comments of WorldCom, WT Docket No. 99-217 (filed March 8, 2002) (“*WorldCom Building Access Comments*”).

<sup>7</sup> See Commercial Buildings Energy Consumption Survey, U.S. Dep't of Energy, Energy Information Administration, 1999 CBECS Tables at Table B1, available at: <<http://www.eia.doe.gov/emeu/cbecs/pdf/alltables.pdf>>.

<sup>8</sup> See, *e.g.*, ALTS, The State of Local Competition 2001, at 28 (2001), available at: <<http://www.alts.org/filings/022001annualreport.pdf>> (last visited Oct. 25, 2002).

<sup>9</sup> Even in LATA 132 – which the FCC has consistently characterized as the most competitive area in the nation – Verizon's network serves 7,364 buildings over fiber, while few competitive LEC fiber networks serve more than 1,000 buildings. See *Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting*, Case Nos. 00-C-2051, 92-C-0665, at 7 (June 15, 2001).

any significant degree. Competitive LEC networks extend to only 30,000 commercial office buildings and they have only a few tens of thousands of local fiber route miles.<sup>10</sup>

In comparison, the incumbent LECs' networks extend to virtually every commercial office building in the United States.<sup>11</sup> This disparity is due in large part to the fact that building owners and landlords still favor incumbent LECs. In most cases, incumbent LECs do not pay for building access. They generally operate without a lease and are not required to make payments to landlords. This free and ubiquitous access gives incumbent LECs a tremendous economic advantage over competitors in serving tenants in these buildings.<sup>12</sup> Moreover, incumbent LECs have not made their own entrance access, conduits, riser cable, inside wiring, and other rights-of-way for MTEs available to competitive carriers on reasonable and non-discriminatory terms, nor have they made their contracts with MTE owners routinely available so that competitive service providers can make informed decisions about the extent of access that can be obtained through existing incumbent LEC agreements.

#### **B. Building Owners Often Impose Onerous Conditions on Competitive LECs Seeking Access to Buildings**

Unlike a stand-alone residence or commercial enterprise, WorldCom and other facilities-based competitive LECs cannot supply service to commercial or MTE buildings absent access from the landlord or owner. Specifically, facilities-based carriers typically require significant point-of-presence ("POP") space to accommodate the electronic equipment necessary to provide service to end-user customers, and they require the ability to access those facilities in order to upgrade, repair, and maintain them. Aware that such access is critical, building owners often require competitive LECs to pay fees for, among other things, the right to enter their building, the floor space required to install circuit equipment within the building, and the use of the building's riser conduit. Although the amount of compensation varies from building to building, access can cost well over a thousand dollars per month, usually over a five- or ten-year lease period.<sup>13</sup>

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<sup>10</sup> Moreover, extension of competitive LEC networks to additional customer buildings remains prohibitively expensive and time-consuming. *See* WorldCom UNE Comments at 19-21.

<sup>11</sup> As monopoly providers operating under rate-of-return regulation, incumbent LECs had the incentive and ability over an extended period of time to build out their networks ubiquitously. As a result, the incumbents already have facilities in place for virtually every building within their region.

<sup>12</sup> Because incumbent LECs have gained nearly ubiquitous access, landlords are able to delay access to competitors in the hopes of extracting maximum access fees.

<sup>13</sup> Landlords usually provide no reasonable rationale for these charges. The charges landlords impose on competitive LECs for access to MTEs include the following:

In addition to these costs, MTE owners often demand a portion of competitors' gross revenues – averaging anywhere from three to seven percent – as a condition for MTE access. Some owners also require competitors to pay an additional fixed amount for monthly rent (typically, square footage multiplied by a negotiated dollar amount). In contrast, incumbent LECs typically receive access to these MTEs without paying any rent at all. Moreover, MTE owners often demand a substantial one-time, non-refundable fee (*e.g.*, \$50,000 per entrance) or an up-front deposit equal to several months' payments. No similar requirement is imposed on incumbent LECs as a condition of MTE access.

The following list sets forth a sample of the specific types of discriminatory and unreasonable treatment that WorldCom has encountered:

- WorldCom has been forced to decommission 14 POPs in Texas and two POPs in Colorado in part due to landlords' high rent demands. WorldCom has also had to decommission POPs in Los Angeles, Boston, and New York.<sup>14</sup>

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- Fee for use of space
  - Fee for use of risers
  - Administrative fees that range from \$1500 - \$5000 up front (usually to pay for a consultant)
  - Oversight fees
  - Processing fees
  - Security deposit
  - Meet-Me-Room fees, even where a competitive LEC may already have a POP in the building
  - Cross-connect fees
  - Fee for occupied space
  - Cable distribution system fee, imposed in situations where the landlord has put in cable or copper and says that no one can put in their own – all must pay monthly recurring fees.

<sup>14</sup> For example, WorldCom was forced to decommission a POP in a building in Century Park in Los Angeles when the landlord increased the rent of \$750 to \$1,000 per month during the term of the agreement. The landlord further notified WorldCom that he would increase the rent to \$1,650 per month during the renewal term since, according to the landlord, other buildings in the area were getting \$2,950 per month. In fact, however, the current comparable market rate for similar buildings in the area was well below \$750 per month. In another case, WorldCom decommissioned a POP in Los Angeles that WorldCom had been serving for over five years because it was unable to negotiate a reasonable rental rate with the landlord. The landlord's demands for a percentage of revenue made serving the building unprofitable. In another example, WorldCom was forced to close a POP in Boston when the landlord demanded an increase in rent from \$1,000 annually to \$3,000 per month. The landlord refused WorldCom's final offer of \$400 per month. In a New York City building, WorldCom has agreements for two POPs – one at \$558 per month and the other at \$312 per month. Both agreements have expired,

- In twenty-one buildings in Texas, New Mexico, Colorado, Oklahoma, Arizona, and Utah, WorldCom has been forced to collocate, rather than put in POPs, due in most cases to high access fees. Collocation is inferior to establishing a POP because WorldCom must bring fiber into a building and run it to a collocation location within the customer's space; WorldCom thus is able to serve only that particular customer. In contrast to a POP, which allows WorldCom to add additional customers without new cable pulls (*i.e.*, without running new wire from WorldCom's facilities to the customer premises), collocation requires an additional cable run and another collocation location for each additional customer.
- Because individual collocation arrangements are less efficient and more costly than POPs, WorldCom has had to advise several customers to place their orders with the incumbent LEC or otherwise cancel its planned expansion.<sup>15</sup>
- WorldCom has had to walk away from or cancel projects in several buildings this year because of landlords' high fee demands<sup>16</sup> or terms that restrict WorldCom's ability to upgrade its systems or install more capacity.<sup>17</sup>

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and the building owner now wants \$5,000 per month for each. Currently, the incumbent LEC pays nothing.

<sup>15</sup> For example, in Los Angeles, WorldCom was forced to move equipment into a collocation arrangement to serve a customer due to the landlord's refusal to negotiate reasonable rates. Due to space restraints in the collocation space, WorldCom was not able to put in all of the circuits the customer needed and had to advise the customer to place the remainder of its order with the incumbent LEC. Similarly, WorldCom was forced to cancel a project in Northern Virginia primarily due to the landlord's unreasonable rent demands. The landlord wanted WorldCom to pay \$750 per month, plus annual escalations, for the right to "pull" each cable to the customer. In general, excessive charges associated with cable pulls arise in two circumstances: (i) when the landlord has ownership and control over in-building facilities, and wants to charge WorldCom exorbitant rates for each cable pull to the customer; or (ii) when the incumbent LEC has control over in-building facilities, and wants to charge WorldCom for the entire cable in a high-rise building when WorldCom may need only two or three floors of cable.

<sup>16</sup> For example, the landlord of a building in Milwaukee, Wisconsin demanded \$1,200 per two inches of space per riser per month. This fee was in addition to the price per square foot for the floor space. WorldCom was seeking to provide service to a large customer that needed redundancy. Not only would the landlord not agree to reduce the \$1,200 per month fee, but also would not agree to allow WorldCom make both runs in the risers for the \$1,200 fee for this one customer.

<sup>17</sup> For example, WorldCom was stopped by the landlord of a building in Atlanta, Georgia from building three feet of conduit and expanding two pull boxes in the building.

- In other cases, the landlord has created a Meet-Me-Room (“MMR”) in a building, through which all service providers seeking to serve customers must connect, despite the fact that MMRs typically result in higher rates,<sup>18</sup> often have insufficient capacity, and also suffer from other limitations.<sup>19</sup>
- Landlords have also exploited their market power to demand a 10-50-fold rate increase during renegotiations. Such increases often make it economically inefficient for WorldCom to continue serving the building’s tenants.<sup>20</sup>

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WorldCom has a License Agreement at this building and installed a POP. During renewal negotiations for a 1,100 square foot space, the landlord requested \$3,000 per month for use of a conduit that was installed years ago. It is not customary to collect rent on a conduit that was built years ago. In another Atlanta building, the landlord stopped WorldCom’s engineers from adding a conduit and removing an existing one, saying that WorldCom would have to enter into a License Agreement and pay a fee of \$75,000. WorldCom has three Access License Agreements for this building that are in good standing which cover upgrades, construction, installations and maintenance. After six months of negotiation, WorldCom finally convinced the landlord to allow construction of the needed conduit. In another example, the landlord of a building in New York City wants to charge WorldCom an additional fee to run fiber, even though WorldCom has a License Agreement in place that covers fees.

<sup>18</sup> For example, WorldCom has a license agreement for a building in Buffalo, New York – an agreement that is in good standing. In spite of this agreement, the landlord is requiring WorldCom to use the MMR, at an additional fee, even though WorldCom’s agreement permits it to meet in the MMR at no additional fee and to make direct connections to its customers. In other cases, the requested rate bears no relation to the cost of interconnection. In a Northern Virginia building, for example, the landlord hired a telecom consultant who recommended that WorldCom pay a monthly fee of \$850 and a one-time license administration fee of \$1,700 for space for one rack of equipment in the building’s lower level MMR room. The consultant refused to negotiate this rate, even though the market rate for floor space between 150-200 square feet in the McLean, Virginia area ran about \$340 a month at the time. The deal he was proposing at \$850 a month equated to \$1,133 per square foot (using nine square feet for a rack footprint), which is about 45 times the average office lease rental rate. The incumbent LEC is not paying anything currently.

<sup>19</sup> For example, in some of the buildings WorldCom serves, landlords often refuse to set reasonable time frames for letting WorldCom begin work to serve a tenant once a contract is negotiated. WorldCom has service level agreements that obligate it to begin service within two weeks after a contract is negotiated, but often has to wait months after a contract is negotiated before getting permission from the landlord to perform actual upgrades and/or installation work.

<sup>20</sup> WorldCom is currently paying \$10,000 per year for access to a building in New York. For renewal, the landlord is now requesting \$100,000 per year. Similarly, in

As a result of such unreasonable and discriminatory treatment, WorldCom has been forced to delay or, in some cases, cancel its plans to offer competitive telecommunications services. Nor is WorldCom alone in experiencing these problems.<sup>21</sup> Its experience, in conjunction with that of other competitive carriers, confirms that building owners and landlords are engaging in a pattern and practice of discriminatory treatment that renders competitive LECs almost completely dependent on incumbent LEC facilities for access to the vast majority of commercial and residential buildings nationwide. In contrast, incumbent LECs continue to gain access to buildings free of charge and without onerous conditions.

## **II. Conclusion**

Although the Commission has established certain requirements to increase competitive LECs' access to multi-tenant environments in its *Competitive Networks Order*, competitive telecommunications service providers still do not have access to the building facilities that comprise the "last mile." Until competitive providers obtain the same access terms enjoyed by incumbent LECs, competitive LECs will remain impaired under section 251 in their ability to provide competitive telecommunications services and end users will be denied the benefits of advanced and innovative service options at competitive prices.

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Chicago, the building owner has demanded that WorldCom sign a new renewal agreement that limits its rights and inhibits its ability to do business. The fee the landlord is demanding will cover only WorldCom's existing customers. WorldCom is required to pay an additional fee for any new customers it secures in the building. The landlord has demanded an upfront fee of \$1,500 plus \$2,000 per month. WorldCom is currently paying \$600 per month.

<sup>21</sup> See generally *Building Access Primer*, Smart Buildings Comments, and WorldCom Building Access Comments, *supra* n.5.